



# House of Representatives

## **File No. 860**

General Assembly

January Session, 2001

**(Reprint of File No. 561)**

Substitute House Bill No. 6936  
As Amended by House Amendment  
Schedule "B"

Approved by the Legislative Commissioner  
June 2, 2001

**AN ACT CONCERNING THE EXPENDITURE OF MONEYS  
ALLOCATED FOR HEALTH CARE AND HUMAN SERVICES AND THE  
ENDANGERMENT OF THE HEALTH OR SAFETY OF NURSING HOME  
RESIDENTS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

- 1      Section 1. (NEW) (a) For the purposes of this section, the term  
2      "covered employer" includes: (1) A person providing residential or  
3      educational services to children in the custody or under the  
4      guardianship of the Department of Children and Families; (2) an  
5      organization establishing, expanding or maintaining mental health  
6      services pursuant to section 17a-453a, 17a-468, 17a-476 or 17a-676 of  
7      the general statutes; (3) a nonprofit organization offering services for  
8      drug-dependent or alcohol-dependent persons pursuant to section  
9      17a-676 of the general statutes; (4) a psychiatric clinic or a child  
10     guidance clinic, as defined in section 17a-20 of the general statutes; (5)  
11     a day treatment center, as defined in section 17a-22 of the general  
12     statutes; (6) a person receiving a grant for programs for the treatment  
13     and prevention of child abuse and neglect or for juvenile criminal  
14     diversion pursuant to section 17a-49 of the general statutes; (7) a

15 community-based program for children and adults with mental  
16 retardation pursuant to section 17a-217 of the general statutes; (8) any  
17 program for persons with mental retardation established pursuant to  
18 section 17a-218 of the general statutes; (9) a program of employment  
19 opportunities and day services for adults with mental retardation  
20 pursuant to section 17a-226 of the general statutes; (10) a private  
21 residential facility licensed to provide care or treatment for persons  
22 with mental retardation or autistic persons pursuant to section 17a-227  
23 of the general statutes; (11) a program for which rates are paid by the  
24 state pursuant to sections 17b-241 to 17b-245, inclusive, or section 17b-  
25 342 of the general statutes; (12) a recipient of reimbursement under  
26 section 17b-340 of the general statutes; and (13) any other recipient of  
27 state funds, including federal funds allocated by the state for the  
28 provision of health care or human services. The term does not include  
29 an acute care general hospital.

30 (b) No funds from the state shall be used by any covered employer  
31 for any activity intended to assist, promote, deter or discourage union  
32 organizing. If any covered employer engages in any activity to assist,  
33 promote, deter or discourage union organizing by an employee who  
34 provides services, directly or indirectly, to Medicaid recipients or  
35 recipients of other state-funded services during a time for which the  
36 employee is paid by the employer, there is established a presumption  
37 that state funds paid for that percentage of the cost of such activity  
38 equal to the percentage of a covered employer's total revenues paid by  
39 the state for the fiscal year during which such activity occurred.

40 (c) Any person may file a complaint with the funding agency if such  
41 person believes that a covered employer is expending funds in  
42 violation of the provisions of subsection (b) of this section. Upon the  
43 filing of such a complaint, the agency shall, within seven days, notify  
44 the covered employer that it shall, within ten days, provide records  
45 sufficient to show that no state funds were used in violation of the  
46 provisions of said subsection (b). If a covered employer engages in  
47 meetings with employees during work time to assist, promote, deter or  
48 discourage union organizing, such records shall include all

49 information relative to each such meeting, including the date, time and  
50 identity of the attendees.

51 (d) A civil action for a violation of the provisions of subsection (b) of  
52 this section may be brought by the Attorney General for injunctive  
53 relief, damages, civil penalties and other appropriate equitable relief.  
54 All damages and civil penalties collected pursuant to this subsection  
55 shall be deposited in the General Fund.

56 (e) A covered employer is liable to the state for the amount of any  
57 funds expended in violation of the provisions of subsection (b) of this  
58 section plus a civil penalty equal to twice the amount of such funds. If  
59 a covered employer expended funds in violation of the provisions of  
60 subsection (b) of this section by virtue of the presumption set forth in  
61 said subsection, such employer shall be liable to the state only for that  
62 percentage of the cost of the activities intended to assist, promote,  
63 deter or discourage union organizing which represents the percentage  
64 of the employer's total revenues paid by the state in the fiscal year  
65 during which such activities occurred and shall not be subject to a civil  
66 penalty.

67 (f) Any individual who knowingly authorizes the use of state funds  
68 in violation of the provisions of subsection (b) of this section shall be  
69 liable to the state for the amount of such funds. Any individual who  
70 knowingly violates the provisions of subsection (b) of this section shall  
71 be personally liable to the state in the amount of one thousand dollars  
72 for each violation.

73 (g) For purposes of this section, any expense, including legal and  
74 consulting fees and salaries of supervisors and employees, incurred for  
75 research or preparation for, planning or coordination of, or carrying  
76 out, an activity to assist, promote, deter or discourage union  
77 organizing shall be treated as paid or incurred for such activity.

78 Sec. 2. (NEW) Any person who intentionally deprives any resident  
79 of a nursing home facility, as defined in section 19a-521 of the general  
80 statutes, of proper physical care or intentionally takes or omits to take

81 any action that causes or permits such a resident to be placed in such a  
82 situation that the health or safety of such resident is endangered, shall  
83 be guilty of a class D felony.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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### **OFA Fiscal Note**

**State Impact:** Potential Indeterminate Revenue Gain,  
Potential Cost, Potential Minimal Revenue  
Gain

**Affected Agencies:** Various Health and Human Services and  
Criminal Justice Agencies

**Municipal Impact:** None

### **Explanation**

#### **State Impact:**

State agencies purchasing health care or human services from various organizations will incur a workload increase to notify a covered employer of alleged complaints, and forward cases requiring further prosecution to the attention of the Office of the Attorney General.

It is anticipated that the Attorney General could absorb the workload increase associated with civil actions arising from the bill within anticipated budgetary resources. An indeterminate revenue gain may result from deposit of any damages and civil penalties to the General Fund.

It should be noted that under current practice, the use of funds awarded by a state agency for purposes prohibited by the bill might already constitute a default of the terms of a contract, as it may not be deemed an allowable expense under the original service agreement. A

department presently has recourse to various remedies for default, including, but not limited to, withholding of funds or requiring repayment of unexpended funds.

The bill makes it a class D felony for intentionally depriving any resident of a nursing home of proper physical care or intentionally taking or omitting any action that allows a nursing home resident's health or safety to be endangered. A class D felony is punishable by one to five years imprisonment and up to a \$5,000 fine. This could result in additional costs to criminal justice agencies related to adjudication and incarceration. The extent to which individuals would be prosecuted under the bill is unknown. There could also be a minimal revenue gain from fines.

House "B" makes it a class D felony to intentionally deprive any resident of a nursing home of proper physical care or take or omit to take an action that places a nursing home resident in danger. The associated fiscal impact is as discussed above.

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**OLR Amended Bill Analysis**

sHB 6936 (as amended by House "B")\*

***AN ACT ENSURING THAT PUBLIC MONEYS ALLOCATED FOR HEALTH CARE AND HUMAN SERVICES ARE EXPENDED FOR SUCH PURPOSES.***

**SUMMARY:**

This bill prohibits any person or entity that receives state funds to provide health and human services from using these funds to assist, promote, deter, or discourage union organizing. Anyone suspecting violations of the prohibition can file a complaint with the state agency that provides the funding. The bill authorizes the attorney general to sue for relief and makes violators liable for both the amount spent illegally and civil penalties.

The bill also makes any person guilty of a class D felony if he intentionally (1) deprives a nursing home resident of proper physical care or (2) takes, or omits to take, any action that places a resident in a situation that endangers a resident's health or safety. A class D felony is punishable by one to five years in prison, a fine of up to \$5,000, or both. (The state's cruelty to persons law imposes a fine up to \$500, imprisonment of up to one year, or both on anyone who willfully or negligently deprives any person of necessary food, clothing, shelter, or proper physical care.)

\*House Amendment "B" adds the provision that makes intentionally depriving nursing home residents of care or placing them in situations that endanger their health or safety a class D felony.

EFFECTIVE DATE: October 1, 2001

**PROHIBITION AGAINST USE OF STATE FUNDS TO ENCOURAGE OR DETER ORGANIZING**

The bill prohibits covered employers from using state funds for activities meant to assist, promote, deter, or discourage union organizing by an employee. The bill covers any time (1) during which

a covered employer violates this prohibition during the work day of an employee who, either directly or indirectly, provides services to people who received Medicaid or other state-funded services and (2) for which the employee is being paid (apparently regardless of whether the employee is actually at work). If this occurs, it presumes that state funds paid for the same percentage of the activity's cost as the percentage of the employer's total revenue that the state paid in the fiscal year when the activity occurred.

Prohibited spending includes legal and consulting fees, as well as salaries of supervisors and employees, incurred for researching or preparing for, planning, coordinating, or carrying out these activities.

### **COMPLAINT FILINGS**

The bill permits anyone who believes a covered employer has violated the prohibition to file a complaint with the state agency that provides the funding. The agency has seven days from when the complaint is filed to notify the employer that it has 10 days to provide records to prove sufficiently that it has not violated this prohibition. The records must include the date, time, and identity of people who attended any meetings between the covered employer and his employees during work time in which these activities occurred.

### **CIVIL ACTIONS AND PENALITIES**

The bill authorizes the attorney general to sue for injunctive relief, civil penalties, and other appropriate equitable relief. Any damages and civil penalties must be deposited in the General Fund.

The bill makes covered employers liable to the state for both the amount of money spent on prohibited activities, as well as a civil penalty twice this amount. For those employers that receive only partial state funding, the liability is limited to the percentage of the activity that is proportionate to the state-funded portion of their revenue, and they are not subject to the civil penalty.

The bill additionally makes individuals who knowingly authorize these uses of state funds liable for the amount of misspent funds, as well as personally liable for \$1,000 per violation.

### **COVERED EMPLOYERS DEFINED**

The bill defines covered employers. It explicitly excludes acute care general hospitals. Covered employers include:

1. providers of residential or educational services to children in Department of Children and Families (DCF) custody or under its guardianship;
2. organizations providing mental health services through (a) the Department of Mental Health and Addiction Services (DMHAS) General Assistance behavioral health managed care program, (b) DMHAS-contracted halfway houses, or (c) DMHAS grants to general hospitals (although the bill explicitly excludes acute care hospitals from the definition of covered employers), municipalities, or nonprofit organizations for providing psychiatric or mental health services;
3. nonprofit organizations or municipal departments that receive DMHAS funds to offer drug and alcohol treatment services;
4. DCF-licensed psychiatric clinics and -designated child guidance clinics;
5. DCF-funded day treatment centers;
6. DCF grantees that (a) treat and prevent child abuse and neglect and (b) divert children from the juvenile justice system;
7. community-based day programs (including day-care, day-camp, and recreational), residential services for children and adults with mental retardation (it is not clear whether this includes respite service providers), and other support service providers;
8. employment opportunity and day service programs for adults with mental retardation;
9. DMR-licensed private residential facilities for people with mental retardation and autism;
10. Department of Social Services (DSS)-funded (a) programs providing day care and vocational training, sponsored by the associations affiliated with United Cerebral Palsy of Connecticut,

Epilepsy Foundation of America, Inc., and Goodwill Industries of America, Inc.; (b) private, nonprofit agencies serving people with autism or neurological impairments; (c) mental health and substance abuse residential facilities; (d) home health care and home-maker home health aide agencies; and (e) certain rehabilitation centers and private facilities providing functional and vocational rehabilitation for severely disabled people;

11. programs reimbursed under the Connecticut Home Care Program for Elders;
12. nursing homes, residential care homes, and residential care facilities for people with mental retardation; and
13. any other person or entity receiving state funds, including federal funds allocated by the state, for providing health and human services.

## **BACKGROUND**

### ***Related State Law***

The state law governing Medicaid rates that the state pays to nursing homes and certain other long-term care facilities permits the DSS commissioner to include extraordinary and unanticipated costs of providing services that were incurred to avoid an immediate negative impact on the patients' health and safety. The law also permits homes to include amounts paid for legal counsel related to negotiating collective bargaining agreements, settlements of grievances, or normal administration of labor relations. Homes are reimbursed based on costs they report to DSS.

This law explicitly prohibits DSS from including in these rates any amount the facility pays to employees, attorneys, or consultants where it is these individuals' responsibility to persuade other employees in the facility to support or oppose unionization.

### ***U.S. Constitution Supremacy Clause and Preemption***

Under the Supremacy Clause of the U.S. Constitution, state law is preempted when Congress explicitly states an intent to regulate in the area. The National Labor Relations Act (29 USC §§151-169) prohibits

employers and unions from coercing employees or discriminating against them on the job because they do or do not wish to join a union, engage in a peaceful strike or work stoppage, or exercise other organizational rights.

***Legislative History***

The House referred the bill to the Public Health Committee on May 8, the Education Committee on May 15, and the Labor and Public Employees Committee on May 17. These committees favorably reported the bill unchanged on May 9, May 16, and May 23, respectively.

**COMMITTEE ACTION**

## Human Services Committee

Joint Favorable Substitute Change of Reference

Yea 12    Nay 5

## Judiciary Committee

Joint Favorable Substitute

Yea 23    Nay 15

## Public Health Committee

Joint Favorable Report

Yea 15    Nay 8

## Education Committee

Joint Favorable Report

Yea 17    Nay 10

## Labor and Public Employees Committee

Joint Favorable Report

Yea 10    Nay 4